



**The future of the UK's Intellectual Property system
Evidence Session 1
13th December 2017, 5.00pm, Committee Room 16**

Parliamentarians

- Pete Wishart MP (Chair)
- Rt Hon John Whittingdale OBE, MP
- Baroness Neville-Rolfe

Witnesses

- Dids Macdonald (CEO, Anti-Copying in Design)
- Eddy Leviten/ Marianne Grant (Alliance for Intellectual Property)
- Alison Statham (Director General, Anti-Counterfeiting Group)
- Natasha Crookes (Director of Public Affairs, British Toy and Hobby Association)
- Jerry Burnie (Technical Advisor for BTHA)

Pete Wishart (PW) opened the meeting and invited the witnesses to introduce themselves.

PW asked the British Toy and Hobby Association (BTHA) why tackling counterfeiting is such an important priority for the toy industry, and how BTHA would like to see IP protections strengthened.

Natasha Crookes (NC) explained the scale of counterfeiting in the toy industry and cited that some 97% of counterfeits come from China. She explained that online platforms are the main, but not the only, problem area and trying to remove traders using online platforms is challenging, due to their mobility and ability to vanish quickly. She said that enforcement mechanisms need to be amended to make it quicker and easier for brand owners to take action. The toy industry is a fashion industry with fast turnover of products and it can take longer to pursue a company to remove a product than it does to sell through the original which is why it is so important to make it easier and less costly for small UK companies to instigate a simple infringement case.

PW also asked about Unregistered Design Rights and how they will change post-Brexit.

Dids Macdonald (DM) said that the vast majority of UK designers rely upon Unregistered Design Rights and that an added issue was that access to justice is often difficult, as most designers are lone, micro and SME and cannot afford the cost of legal action. She said that it can be easier to achieve a positive result through mediation but that this goes against the current legal business model. She explained that the average hourly earnings for designers (according to the Design Council) is £14.10 which would explain why designers cannot afford to instruct solicitors many of whom charge anything between £200 and £500+ per hour.

John Whittingdale (JW) asked if they had worked with online trading platforms to identify counterfeit sellers. **NC** explained that it takes a long time to remove sellers, who can then easily remerge.

Alison Statham (AS) said that the biggest obstacle to tackling counterfeit goods is the sheer number of counterfeit products being sold online, and that each product must be taken down individually. She also voiced concern that Trading Standards continues to experience funding cuts, and cited the lack of resources at Camden Council as an example.

Baroness Neville-Rolfe asked about the impact to safety of counterfeit products. **Jerry Burnie (JB)** explained that counterfeit toys are of lower quality which can represent a chemical or choking hazard. He explained that safety regulations make compliance expensive, allowing counterfeiters to produce inexpensive, low quality products that undercut the price of the safe original products. **NC** praised eBay for working with some members where they have been proactive in removing reported counterfeit products.

Eddy Leviten (EL) said that since the signing of the Search Voluntary Code both Google and Bing had changed their algorithms to remove links to sites infringing copyright (film, TV and music represented by the BPI and Motion Picture Association). He explained that the initial test results were encouraging and the UK is seen as leading on tackling online IP infringement.



He further explained that the potential impact of Government intervention through the Digital Economy Bill and Digital Charter has been cited as helping to drive search engines to take action. However, the Code now needs to expand to cover other copyright rights owners as well as trademarks and design rights.

JW asked about the impact of Brexit to the enforcement of IP rights. **AS** said that Brexit will make it harder for the enforcement bodies of the EU and UK to engage, and that Brexit may lead to a divergence of policies and priorities. **BNR** said it would be useful for the UK to try and reach a consensus with EU partners on the enforcement of counterfeits.

NC said that Brexit does provide an opportunity to help stop counterfeits at their source as it offers an opportunity to work on bi-lateral trade agreements to stop the copies at source when talking to China, India, etc. However, she warned that the UK will lack the protection of the CE Mark post-Brexit which could result in the UK becoming a 'dumping ground' for low quality products.

DM also warned that UK designers would lose the EU Unregistered Design Right which covers the all important element of surface decoration, and that the UK will need to ensure that its own UK Unregistered Design Right mirrors the broader and stronger EU unregistered rights if UK designers are not to be disadvantaged post-Brexit.

EL explained that there is an anomaly around Unregistered Design Rights which means that reciprocation on this cannot be achieved through the Withdrawal Bill. He warned that there are currently no discussions between the UK and European IPOs on this. **PW** agreed that this is a worrying situation.

BNR asked about the potential impact of the Digital Charter. **EL** explained that he had spoken with DMCS, and asked that these issues be considered. He further explained that the Digital Charter is unlikely to be comprised on a single piece of legislation, but that the Alliance will continue to provide ideas and themes to help inform it.

BNR asked the Alliance to write to the APPG officers outlining their priorities for the Digital Charter.

PW asked about the impact of illicit streaming and the steps being taken to counter it. **EL** explained that 25% of the population have used illicit streaming devices (such as Kodi boxes), which has a huge impact on the creative industries, as well as private and public broadcasters. He said that one solution to illicit streaming is site blocking, while the IPO had also launched a new campaign with Crimestoppers to help educate the public about the dangers of illicit streaming.

JW asked if Amazon were still selling illicit streaming devices. **EL** confirmed this, but said that they were also beginning to take better notice of the situation. **JW** asked why Amazon and eBay were willing to take action to tackle illicit streaming, but not counterfeit toys. **NC** said this was due to the parties interested in illicit streaming having greater resources and "voice" than the toy industry. She explained 80% of toy companies are SME's and they are not big enough to get the attention of these platforms, however even the large toy companies report issues that are not being addressed. Online platforms should be treated in the same way as bricks-and-mortar retail – responsible for the goods "sold" from their shop and be made to proactively remove counterfeit listings BEFORE they are published.

BNR asked why Kodi boxes can't be banned. **EL** explained that the boxes can be used legitimately (although they rarely are). He further said that the UK has led the way on tackling illicit streaming devices and that the situation has improved in terms of cooperation with online platforms. He said that the IPO was now considering legislation on this issue.

BNR said that a Private Members Bill could potentially consider how to better counter illicit streaming during the House of Lords debate on the European Withdrawal Bill.

DM also raised the issue of 3D printing which is, ACID believes, an easy target for counterfeiters and lacks any current law to enforce as the majority of UK designers rely on Unregistered Design Rights. Only the deliberate infringement of a registered design is a crime. Current IPO research has not taken into account the substantial amount of research already undertaken in the US. It has concentrated on Australia where the problem is still not an issue. This is why ACID is still keen to pursue the criminalisation of unregistered design rights.

PW thanked the witnesses for attending and closed the session.